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EU Diplomacy and the Iran Nuclear Deal: Staying power?

Steven Blockmans & Astrid Viaud

Summary

The nuclear deal with Iran is often hailed as one of the few diplomatic successes of EU foreign policy. While the convening power of the European Union in ‘the making of’ phase of the Joint Comprehensive Plan of Action (JCPOA) has indeed been critical and well documented, an independent assessment of the EU’s facilitating and mediating role in the implementation of the nuclear agreement has so far been lacking. This paper seeks to plug that gap. It analyses the tasks entrusted to the EU as the coordinator of the Joint Commission, the executive body overseeing the implementation of the agreement, evaluates how the EU has performed its duties and assesses whether the economic benefits which the EU derives from the lifting of nuclear-related sanctions and the opening of the Iranian market risk undermining its role as an honest broker.

This paper finds that, in the Joint Commission, the EU is accepted as a *primus inter pares* among the five permanent members of the Security Council, Germany and Iran. Its role is not just to convene and facilitate discussions about the implementation of the nuclear deal, but also to mediate disputes among any of the participants. So far, it has done so successfully. But two years since the signing of the nuclear deal, the real stress test is about to come. How the EU will cajole the administration of President Trump to keep the US wedded to the JCPOA will determine not just the future effectiveness of the nuclear deal, but also colour the legacy of the EU and its High Representative as a diplomatic actor on the global stage.

Steven Blockmans is Head of the EU Foreign Policy unit at CEPS and Professor of EU External Relations Law and Governance at the University of Amsterdam. Astrid Viaud is a PhD candidate at Université Catholique de Louvain and an intern at the EU Foreign Policy unit of CEPS.

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EU Diplomacy and the Iran Nuclear Deal: Staying power?

Steven Blockmans & Astrid Viaud

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Introduction

The nuclear deal with Iran is often hailed as one of the few undisputed diplomatic successes of EU foreign policy. Thanks to the international opening to Iran that three member states (France, Germany and the UK) skilfully created in 2003 by operating outside of the framework of the Council, subsequent High Representatives were able to build consensus among the other EU member states and institutions. They were also able to serve as the diplomatic go-between for the five permanent members of the UN Security Council + Germany ('P5+1' aka 'E3/EU+3') and Iran, balance a dual-track approach of economic pressure and political dialogue, and broker the Joint Comprehensive Plan of Action (JCPOA) on 14 July 2015.

The EU's own assessment of the negotiation process has been that:

Only the European Union could have played that role. No other actor would have been accepted. Russia, China and the US could not have done it, but also none of the EU Member States could have done it. It was only the EU that was accepted because the EU was perceived by both sides as a neutral actor, as a moderator, a facilitator. We were bridge builder in the context between Iran and the US, which continues to be difficult.¹

While the convening power of the EU in 'the making of' phase of the nuclear agreement has indeed been critical and well documented,² as yet there is no independent assessment of the EU's facilitating and mediating role in the implementation of the agreement. Arguably, the EU High Representative will only merit her place among the

Arguably, the EU High Representative will only merit her place among the pantheon of acclaimed diplomats once the JCPOA has withstood the forces of nature and is properly implemented.

¹ Helga Schmid, Executive Secretary General of the European External Action Service and leading figure in the nuclear talks with Iran at political director level, speaking on "Europe and Iran: Beyond the Nuclear Deal" at Carnegie Europe on 17th May 2017 (<http://carnegieeurope.eu/2017/05/17/europe-and-iran-beyond-nuclear-deal-event-5595>).

² For independent assessments, see A. Viaud, *L'Union européenne face à la crise du nucléaire iranien (2003-2017)*, Louvain-la-Neuve: Presses Universitaires de Louvain 2017 (https://pul.uclouvain.be/author/?person_ID=6283); T. Cronberg, *Nuclear Multilateralism and Iran: Inside EU Negotiations*, Abingdon: Routledge, 2017. See also C. Adebahr, *Europe and Iran: The Nuclear Deal and Beyond*, Abingdon: Routledge 2017; S. Blockmans, A. Ehteshami and G. Bahgat (eds.), *EU-Iran Relations After the Nuclear Deal*, Brussels: CEPS e-book 2016.

pantheon of acclaimed diplomats once the JCPOA has withstood the forces of nature and is properly implemented.

Two years since the signing of the nuclear deal, the challenges to the proper implementation of the JCPOA are both domestic and international. In the wake of the re-election of President Rouhani in May 2017, the focus of the hardliners in Iran is firmly on the delivery by the government of the promised economic gains from the removal of nuclear-related sanctions on the country. Internationally, the main challenge to the continued success of the JCPOA comes from a hardened US position under President Trump on the politics of the Middle East in general, and of Iran in particular. The Republican administration's urge to punish the theocratic regime for its wrong-doings and to keep Iran's regional ambitions in check, combined with Tehran's incursion into Syria and sabre-rattling with its ballistic missiles programme, have poisoned the debate on the implementation of the JCPOA.³

The main challenge to the success of the JCPOA comes from a hardened US position under President Trump on the politics of the Middle East in general, and of Iran in particular.

In this paper, we examine the EU's diplomatic role and efforts to stick to the nuclear deal. We start with an analysis of the interpretative scope of the JCPOA: what falls within and beyond its remit? We then turn to the tasks entrusted to the EU as the coordinator of the Joint Commission overseeing the implementation of the agreement, and assess how the EU has delivered on its duties. In this respect, we gauge whether the economic benefits which the EU derives from the lifting of nuclear-related sanctions and the opening of the Iranian market risk undermining its role as honest broker.

The spirit of the JCPOA

The JCPOA sets out the terms under which the exclusively peaceful and civilian nature of the Iranian nuclear programme can be guaranteed. As such, the deal aims to eliminate the risk of exceeding the threshold beyond which that programme is militarised. The cancellation of this risk requires that until 2030 Iran keeps its uranium enrichment activities below a rate of 3.67% and maintains a total stock of uranium under 300 kg. The guarantee of the civilian nature of the nuclear programme depends on Iran's commitment to reduce its total stock of enriched uranium by 98%. Uranium enrichment activities are now only limited to the Natanz facility in the Isfahan Province – the underground testing site of Fordow is off-limits. Two-thirds of Natanz's centrifuges have been dismantled. Only five thousand of the old IR-1 model are permitted for use until 2030. Adherence to these obligations means that Iran's 'breakout time'⁴

³ We attach less relevance to the challenges posed to European unity by the prospect of Brexit since the UK has, from the very beginning of the process in 2003, acted in its own strategic interest, which it shares with the other European members of the P5+1.

⁴ The 'breakout time' is the amount of time it would take Iran to acquire enough fissile material for one nuclear weapon. See O. Heinonen, "Iran's Nuclear Breakout Time: A Fact Sheet", in *PolicyWatch 2394I*, Policy Analysis, The Washington Institute, March 28, 2015.

is extended from three months to one year, thus enhancing the chances for international inspectors to detect any Iranian non-compliance in due time. The JCPOA provides for the reconstruction of the heavy-water reactor at Arak, with a view to cancelling the production of plutonium for military purposes and to devote the plant only to the production of medical radioisotopes. In short, the nuclear agreement contributes to the strengthening of the 1968 Nuclear Non-Proliferation Treaty (NPT). In fact, the JCPOA requires Iran to provisionally apply the Additional Protocol, pending ratification by the parliament by 18 October 2023 at the latest.

The International Atomic Energy Agency (IAEA) has been tasked with the continuous monitoring of Iranian nuclear activities at each stage of the nuclear fuel cycle.⁵ To that end, the JCPOA provides a strengthened access mechanism for the IAEA, which may request inspection of an Iranian nuclear site within 14 working days. If not, point 78 of the Agreement stipulates that:

Iran, in consultation with the members of the Joint Commission, would resolve the IAEA's concerns through necessary means agreed upon between Iran and the IAEA. In the absence of an agreement, the members of the Joint Commission, by consensus or by a vote of 5 or more of its 8 members, would advise on the means necessary to resolve the IAEA's concerns. The process of consultation and any action with the members of the Joint Commission would not exceed seven days, and Iran would implement the necessary means within three additional days.⁶

In keeping with UN Security Council Resolution (UNSCR) 2231 of 20 July 2015,⁷ and following the confirmation by the IAEA's Director General that Iran had provided clarity about its past nuclear activities and was thus in compliance with the pre-conditions for the entry into force of the JCPOA on 16 January 2016,⁸ the Security Council, the US and the EU lifted their respective economic and financial sanctions related to Iran's nuclear programme.

In addition to the lifting of sanctions adopted to give effect to UNSCR 2231 in the EU legal order, the European Union has also lifted the nuclear-related sanctions that it adopted autonomously. Imposed between 2010 and 2012, these measures targeted the financial, banking, insurance, petroleum, gas, petrochemical and shipbuilding and transport sectors, as well as gold, precious metals, banknotes and coins, metals and software markets. EU autonomous sanctions targeting Iranian persons and entities linked to the violation of human rights continue to apply, however.⁹

⁵ The JCPOA also provides that the IAEA regularly updates the UN Security Council.

⁶ JCPOA, p. 43.

⁷ S/RES/2231 (2015): http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2231%282015%29.

⁸ IAEA Board of Governors, "Verification and Monitoring in the Islamic Republic of Iran in light of United Nations Security Council Resolution 2231 (2015)", Report by the Director General, January 16, 2016, GOV/INF/2016/1.

⁹ See the designated website of the Council of the European Union, "EU restrictive measures against Iran" (<http://www.consilium.europa.eu/en/policies/sanctions/iran/>).

The United States only lifted its so-called ‘secondary sanctions’, i.e. the restrictive measures autonomously adopted by Congress from 2010 onwards in relation to the nuclear programme.¹⁰ The primary sanctions that were adopted in the aftermath of the hostage crisis of the US Embassy in Iran in 1979 are not affected. These sanctions consist of a trade embargo,¹¹ assets-freezes on terrorists and their supporters¹² and human rights violators,¹³ and a restriction on imports of goods, technologies and services provided by third parties in connection with the proliferation of weapons of mass destruction. In fact, the US has ramped up its primary sanctions. One day after the entry into force of the JCPOA, the US Treasury Department’s Office of Foreign Assets Control (OFAC) imposed targeted sanctions against 11 entities and individuals involved in procurement on behalf of Iran’s ballistic missile programme.¹⁴ In response to ballistic missile tests conducted by Iran on 31 January 2017, the new US administration adopted further sanctions, freezing the financial assets of 13 people and 12 entities based in the United Arab Emirates, Lebanon and China. Iran has denounced these US sanctions as illegal and announced its intention to retaliate by imposing “legal restrictions targeting American individuals and entities assisting regional terrorist groups.”¹⁵ Yet the new sanctions adopted by the US are in line with the terms of the JCPOA, which states that proliferation-related sanctions and restrictive measures will only be lifted on 18 October 2023 if the IAEA confirms the peaceful nature of Iran’s nuclear activities. The EU too maintains sanctions related to missile technology, as well as an embargo of arms of all types included in the EU common military list, and restrictions on certain nuclear-related transfers and activities. These measures target the dissemination of weapons by Iran in the Middle East and have coloured the discussions in the Joint Commission.

¹⁰ Articles 4.1-4.7 of Annex II and 17.1-17.2 of Annex V of the JCPOA. See also U.S. Department of the Treasury, “Frequently Asked Questions Relating to the Lifting of Certain U.S. Sanctions Under the Joint Comprehensive Plan of Action (JCPOA) on Implementation Day”, June 8, 2016.

¹¹ See “Executive Order 13599” and “Iranian Transactions and Sanctions Regulations.”

¹² See “Executive Order 13224.”

¹³ See *Executive Orders*, 13553, 13628 and 13606.

¹⁴ See U.S. Department of the Treasury, “[Treasury Sanctions Those Involved in Ballistic Missile Procurement for Iran](#)”, 17 January 2016.

¹⁵ Y. Torbati, “Trump Administration Tightens Iran Sanctions, Tehran hits Back,” in *Reuters*, 3 February 2017.

Role of the EU in the Joint Commission

The JCPOA established a Joint Commission to monitor the implementation of the nuclear deal. The Joint Commission comprises representatives of the P5+1 and Iran. Assigned by the agreement as one of the ‘participants’ and ‘coordinator’ of the Joint Commission, the European Union plays a leading role in overseeing the implementation of the JCPOA. The EU, by way of its High Representative and supported by the European External Action Service (EEAS), is also vested with the task of coordinating two working groups, one on procurement and another on the implementation of sanctions lifting.¹⁶ The EU’s diplomatic authority was formalised in international legal terms when the UN Security Council endorsed the JCPOA in Resolution 2231 (2015) and urged its full implementation on the timetable established in the deal.

The EU’s diplomatic authority was formalised in international legal terms when the UN Security Council endorsed the JCPOA in Resolution 2231 (2015).

The JCPOA prescribes that the “Joint Commission will meet on a quarterly basis and at any time upon request of a JCPOA participant to the Coordinator” in New York, Vienna or Geneva, keeping the meetings confidential.¹⁷ The only traces of the five meetings that have taken place since the entry into force of the JCPOA are the statements published on the website of the EEAS¹⁸ and the nine documents of the Joint Commission published on the website of the IAEA as clarifications of the substance of the JCPOA and the functioning of the Joint Commission itself.¹⁹

¹⁶ Sections 6 and 7 of Annex IV of the JCPOA, pp. 3-6 (http://eeas.europa.eu/archives/docs/statements-eeas/docs/iran_agreement/annex_4_joint_commission_en.pdf). Practice has shown that the working group on civil nuclear cooperation, in which the ‘E3/EU+3’ participates, has been important to bring Iran back into the international scientific community – and thus increase its cost of a potential future walk-out. See JCPOA, “Annex III - Civil Nuclear Cooperation” (<https://www.state.gov/documents/organization/245322.pdf>).

¹⁷ Since Implementation Day 21, the procurement working group meets every three weeks in Vienna to discuss “items, materials, equipment, goods and technology indented to be used in nuclear activities authorized by the JCPOA.” See IAEA, Information Circular INFCIRC/907, p. 17. The sanctions working group has had one official meeting but sanctions experts are in a regular contact and have held several informal meetings.

¹⁸ Statement of 19 October 2015 is available at https://eeas.europa.eu/headquarters/headquarters-homepage/5836/press-release-outcome-first-joint-commission-joint-comprehensive-plan-action-jcpoa-iranian_en. Statement of 19 July 2016 is available at https://eeas.europa.eu/headquarters/headquarters-homepage/7271/press-release-holding-joint-commission-jcpoa_en. Remarks by High Representative Mogherini following the ministerial meeting of the Joint Commission on the implementations of the JCPOA on 23 September 2016: https://eeas.europa.eu/headquarters/headquarters-homepage/10296/remarks-high-representative-mogherini-following-ministerial-meeting-joint-commission_en. Statement of 10 January 2017: https://eeas.europa.eu/headquarters/headquarters-homepage/18436/press-release-behalf-joint-commission-jcpoa-10-january-2017_en. Statement of 25 April 2017: https://eeas.europa.eu/headquarters/headquarters-homepage_en/25069/25%20April%202017%20meeting%20of%20the%20JCPOA%20Joint%20Commission.

¹⁹ IAEA, Information Circular INFCIRC/907, “Communication dated 21 December 2016 to the Agency sent on behalf of High Representative Mogherini in her capacity as Coordinator of the Joint Commission established under the Joint Comprehensive Plan of Action,” 23 December 2016 (<https://www.iaea.org/sites/default/files/publications/documents/infircs/2016/infirc907.pdf>); IAEA, Information Circular INFCIRC/907/Add.1, “Communication dated 11 January 2017 to the Agency sent on behalf of High Representative Mogherini in her capacity as Coordinator of the Joint Commission established under the Joint

The public statements show that four of the five meetings were held at the level of Political Directors of JCPOA participating countries, chaired by the Secretary General of the EEAS Helga Schmid,²⁰ and one at ministerial level, chaired by EU High Representative Federica Mogherini in the context of the 2016 UN General Assembly. These statements also illustrate the ability of the EU to muster the technical, legal and diplomatic expertise needed to implement the powers conferred on it by the JCPOA. The role of the EU as the chief guarantor of the JCPOA becomes clear with regard to the preservation of the deal from contamination by external issues, such as questions about the role of Iran in regional conflicts and the adoption of US sanctions on the Iranian ballistic missile programme. In response to the concerns raised by Iran in December 2016, the EU convened the Joint Commission on 10 January 2017 in a successful effort to conciliate between the two arch rivals. Afterwards, the following statement was published:

... the EU has shown its ability to muster the technical, legal and diplomatic expertise needed to implement the powers conferred on it by the JCPOA.

The Joint Commission underscored the sanctions lifting commitments contained in the JCPOA, in particular as they relate to the Iran Sanctions Act, and recognised the United States' assurance that extension of the Iran Sanctions Act does not affect in any way the sanctions lifting Iran receives under the deal or the ability of companies to do business in Iran consistent with the JCPOA.²¹

As far as the nine clarifying documents on the IAEA website are concerned: these deal with technical issues related to the percentage of uranium enrichment; the dimensions of hot cells; the transfer of Tehran Research Reactor partially fabricated fuel plates out of Iran; a template for describing types of centrifuges; the procedure to determine the SWU (separative work unit) to three centrifuge types; Practical arrangements for the Procurement Working Group and the Commission for matters relating to the Procurement Channel; the End-Use Certification; and the transfer out of Iran of any heavy water in excess of 130 metric tonnes.

The latter document refers to a slight overshooting of the limit of heavy water held by Iran. Known as the Oman loophole “whereby Iran can store offshore in Oman heavy water it owns and controls in excess of the nuclear deal’s limits, awaiting its eventual sale,”²² the absence of

Comprehensive Plan of Action,” 12 January 2017 (<https://www.iaea.org/sites/default/files/publications/documents/infircs/2016/infirc907a1.pdf>).

²⁰ And in her capacity as Deputy Secretary General for Political Affairs before her appointment as SG on 15 June 2016.

²¹ See https://eeas.europa.eu/headquarters/headquarters-homepage/18436/press-release-behalf-joint-commission-jcpoa-10-january-2017_en.

²² D. Albright and A. Stricker, “[Heavy Water Loophole in the Iran Deal](#)”, in *Institute for Science and International Security*, 21 December 2016. See also *Dawn*, “Iran to sell 40 tonnes of heavy water to US”, 13 January 2016.

any formal prohibition by the JCPOA of additional Iranian production of heavy water, as long as Iran finds a buyer, presents a risk of Iran becoming a nuclear supplier.²³ Inspectors detected two violations of the narrow limit of 130 metric tons of heavy water that Iran is allowed hold, which prompted the Iranians to immediately correct the situation. This shows that the monitoring mechanisms on which the JCPOA rests, and indeed the Joint Commission's role in interpreting and 'enforcing' the deal, are functioning.²⁴

In the case of disputes, the Joint Commission may trigger the resolution mechanism provided by the JCPOA. This mechanism allows any participant to refer to the Joint Commission the lack of conformity of any party to its commitments for resolution.²⁵ The procedure follows four steps:

... the monitoring mechanisms on which the JCPOA rests, and indeed the Joint Commission's role in interpreting and 'enforcing' the deal, are functioning.

- (i) A JCPOA participant may refer the issue to the Joint Commission, which would have 15 days to resolve the issue unless the time period was extended by consensus. Here, the EU — as coordinator — would play a key role as facilitator and mediator, unless of course it were the participant raising the issue of non-compliance. To preserve its role as coordinator, the EU would in that case be advised to 'delegate' the referral of the issue to one of the E3 members.
- (ii) In case of non-resolution by the Joint Commission, any participant could refer the issue to the Ministers of Foreign Affairs who would also have 15 days to resolve the issue, unless the time period was extended by consensus. The EU High Representative is present whenever the Joint Commission has to meet at ministerial level but does not take part in decision-making on nuclear-related transfers and activities as set out in section 6 of Annex IV.
- (iii) If these two first steps fail to produce a solution, then a participant could request that the issue be considered by an 'Advisory Board', which would consist of three external members appointed by the participants involved in the dispute. The arbitral commission would then provide a non-binding opinion on the compliance issue within 15 days.
- (iv) If the issue still has not been resolved to the satisfaction of the complainant, then that participant of the Joint Commission could take the case to the UN Security Council, which would have to vote, within 30 days of the notification, on a resolution whether or not to continue the sanctions lifting. If no such resolution were adopted within the said

²³ See D. Albright and A. Stricker, "[U.S. Purchase of Iran's Heavy Water: Encouraging a Dangerous Nuclear Supplier](#)", in *Institute for Science and International Security*, 23 May 2016.

²⁴ See also Iranian media reports about the purchase by Iran of "yellow cake" (<http://www.presstv.com/Detail/2017/02/06/509292/iran-aeoi-natural-uranium-salehi>). The ultimate 'sanctioning' power provided for by the JCPOA does not lie with the Joint Commission but with the UN Security Council. See the fourth step in the dispute settlement mechanism described below.

²⁵ See JCPOA, p. 17 (http://eeas.europa.eu/archives/docs/statements-eeas/docs/iran_agreement/iran_joint-comprehensive-plan-of-action_en.pdf).

timeframe, then the sanctions provisions of the old UNSC resolutions would ‘snap back’, i.e. be reimposed on Iran, unless the UN Security Council decided otherwise.

On the basis of the foregoing and the information that is in the public domain, one can deduce that the EU has played its multifaceted role as coordinator to the full: as convener, compliance-checker, legal interpreter, mediator and conciliator, i.e. a trustworthy guardian of the JCPOA. Two years since the signing of the JCPOA there is no evidence to suggest that the other participants of the Joint Commission do not value the role of the EU as coordinator.

The EU has played its multifaceted role as coordinator to the full: as convener, compliance-checker, legal interpreter, mediator and conciliator, i.e. a trustworthy guardian of the JCPOA. Two years since the signing of the JCPOA there is no evidence that the other participants of the Joint Commission do not value the role of the EU as coordinator.

Ahead of the second anniversary of the implementation of the nuclear agreement, EU High Representative Federica Mogherini welcomed the implementation of the deal and the political will of each participant to achieve progress:

We had just ten days ago the sixth IAEA [International Atomic Energy Agency] report saying that the agreement is fully implemented. So we are defeating all these sceptics who first were betting on the impossibility to have an agreement, then on the impossibility of having the agreement starting to be put in place when we got to the implementation day, and then were saying in any case it will never hold; and now we are getting close to the second year and for the sixth time the IAEA says that it is fully implemented.²⁶

In issuing the (self-)congratulatory statement to mark the second anniversary of the JCPOA, Mogherini also recognised the single-most important danger to the future effectiveness of the deal, as indeed her own legacy in this respect: President Trump’s stance towards Iran.

²⁶ European External Action Service, “[Remarks by the High Representative/Vice-President Federica Mogherini at the press briefing in the margins of the Oslo Forum](#)”, Oslo, 13 June 2017. See also the statement issued to mark the first anniversary of the JCPOA (https://eeas.europa.eu/headquarters/headquarters-homepage/18609/statement-federica-mogherini-first-anniversary-implementation-jcpoa_en).

EU-Iran relations: from nuclear non-proliferation to socio-economic cooperation

At the beginning of its mandate, the Trump-led administration has initiated a review of the JCPOA.²⁷ The rationale behind the order is informed by longstanding ideological animosity towards Iran, entertained by Republicans since the 1979 hostage crisis, and the transactional attitude to international relations by the new President, who is keen to prevent other states benefitting from increased trade benefits with Iran while the US adopts 'self-restraint' in its dealings with a regime that supports international terrorism. By the White House's own admission, President Trump has gone so far as to put pressure on his fellow leaders gathered at the G20 summit in Hamburg to "stop doing business with nations that sponsor terrorism, especially Iran."²⁸ The stance of the new US administration is not just problematic in and of itself. It also touches on the long-stated ambitions of the EU and its member states to improve economic relations with Iran, and raises questions about the perception by all participants to the Joint Commission of the impartiality of the Coordinator. In the context of this paper, we zoom in on the role of the EU.

The stance of the new US administration is not just problematic in itself. It also touches on the long-stated ambitions of the EU and its member states to improve economic relations with Iran, and raises questions about the perception by all participants to the Joint Commission of the impartiality of the Coordinator.

Since the suspension of the negotiations of a *Trade and Cooperation Agreement* and *Political Dialogue Agreement* in 2003, 12 years of diplomatic negotiations exclusively focused on the Iranian nuclear issue, the entry into force of the JCPOA and the subsequent lifting of nuclear-related sanctions have paved the way for efforts by the EU and Iran to deepen and widen their political and socio-economic relations.²⁹

The joint statement delivered by High Representative Mogherini and Iranian Foreign Minister Zarif on 16 April 2016 paved the way for different and successive visits, back and forth at both technical and political level, to foster the areas of energy, climate, research and innovation, drugs, human rights, migration, transport, economic and civil nuclear cooperation.³⁰ As a result of these exchanges, an EU-Iran High-Level Seminar on 'International Nuclear Cooperation:

²⁷ Secretary of State Rex Tillerson told reporters on 19 April 2017, that the administration will "review completely the JCPOA itself." Letter available at <https://www.state.gov/secretary/remarks/2017/04/270315.htm>. See further K. Katzman and P. Kerr, "Iran Nuclear Agreement", Congressional Research Service Report, 21 April 2017, p. 28 (<https://fas.org/sgp/crs/nuke/R43333.pdf>).

²⁸ The White House Office of the Press Secretary, Press Briefing by Principal Deputy Press Secretary Sarah Sanders and Director of Legislative Affairs Marc Short, 10 July 2017 (<https://www.whitehouse.gov/the-press-office/2017/07/10/press-briefing-principal-deputy-press-secretary-sarah-sanders-and>).

²⁹ See S. Blockmans, A. Ehteshami and G. Bahgat (eds.), *EU-Iran Relations after the Nuclear Deal* (Brussels, CEPS e-book 2016).

³⁰ On 16 April 2016, Mogherini led a team of no fewer than 7 Commissioners to Iran. See https://eeas.europa.eu/headquarters/headquarters-homepage_en/2281/Iran%20and%20the%20EU. An EU liaison team is co-located in the Embassy of the Netherlands. See https://eeas.europa.eu/headquarters/headquarters-homepage_en/2281/Iran%20and%20the%20EU.

Expectations and Responsibilities' and the inaugural Iran-EU Business Forum on Sustainable Energy took place in the first quarter of 2017.³¹

The rapprochement has been fruitful with regard to the industrial contracts signed by European multinational companies like Enel,³² Saipen,³³ Peugeot,³⁴ Siemens,³⁵ Airbus,³⁶ Renault,³⁷ and Total.³⁸ While structural impediments to trade and investment remain, bilateral trade in the first 16 months since the nuclear deal took effect has increased by 79% compared to 2015, while Iran's exports to the EU rose by 450% – albeit it from a very low baseline.³⁹ Whereas the EU used to be the first trading partner of Iran, it now only ranks as the fifth trade partner of Iran, accounting for 6% of Iran's trade.⁴⁰ The United Arab Emirates and China are now Iran's main trade partners, accounting for 23.6% and 22.3% of Iran's trade respectively. In the EU's own assessment:

Oil revenues have returned to pre-sanctions levels. Oil debts are being recovered. The GDP has grown sharply and investment and infrastructure have resumed. (...) This is not to deny that growth has not been uneven in some areas. We need more progress

³¹ See European Commission, "[EU-Iran High-Level Seminar on 'International Nuclear Cooperation: Expectations and Responsibilities' takes place](#)" and European Commission, "[Commissioner Arias Cañete in Iran for the first-ever Iran-EU Business Forum on Sustainable Energy](#)".

³² See <http://www.hellenicshippingnews.com/italys-enel-trade-to-buy-irans-lng/>.

³³ See <https://apnews.com/0a37f20a0a0045dd9ca74196456d68cf/iran-and-italy-sign-several-deals-during-visit-pm-renzi>.

³⁴ French carmaker Peugeot-Citroen resumed its partnership with Tehran-based Khodro under a €400m joint venture. See <https://www.theguardian.com/world/2016/jun/22/peugeot-citroen-back-on-the-road-in-iran-with-deal-to-build-cars>.

³⁵ In October 2016, the company signed a multi-million-euro contract with Iran's industrial MAPNA Group a contract to supply 50 diesel-electric locomotives to the Iranian Islamic Republic Railways.

³⁶ In December 2016, under a deal worth \$18 billion, Iran purchased 100 Airbus planes. See <https://www.usnews.com/news/business/articles/2017-01-12/irans-first-new-airbus-jetliner-lands-in-tehran>.

³⁷ After resuming its joint venture signed in 2004 with Iran's Industrial Development Renovation Organisation (IDRO), French automaker Renault has registered an unprecedented 161.5% increase in sales in the first quarter of 2017. See <https://financialtribune.com/articles/economy-auto/63303/renault-iran-sales-up-161-in-q1>.

³⁸ On 3 July 2017, French oil company Total has signed a \$4.8 billion deal with Iran for the development of South Pars gas field, in which it now has a 50.1% stake, alongside state-owned China National Petroleum Corporation (30%) and Iran's Petropars (19.9 %). Gas production for the Iranian market will start in 2021. See <http://www.cnn.com/2017/07/03/iran-to-sign-new-ipc-gas-deal-with-total-for-south-pars.html>.

³⁹ See European Commission, "[Commissioner Arias Cañete in Iran for the first-ever Iran-EU Business Forum on Sustainable Energy](#)".

⁴⁰ European Commission, Trade, "Iran" (<http://ec.europa.eu/trade/policy/countries-and-regions/countries/iran/>). The balance in trade with Iran was €2,7 billion in 2016. Except for 2009, trade balances for the previous 10 years with Iran were mostly negative. The EU exported over €8.2 billion worth of goods to Iran in 2016. EU exports to Iran are mainly machinery and transport equipment (€3.8 billion, 46.2%), chemicals (€1.8 billion, 22.2%), and manufactured goods (€0.7billion, 8.8%). The EU imported almost €5.5 billion worth of goods from Iran in 2016. Most EU imports from Iran are energy-related (mineral fuels account for €4.2 billion and 77.0% of EU imports from Iran), followed by manufactured goods (€0.4 billion, 8.5%), and food (€0.3 billion, 6.8%). In 2016, EU imports from Iran increased by 344.8% and EU exports increased by 27.8%.

in the banking sector. Banks remain reluctant over compliance in some cases. But there are positive aspects as banks are reconnected to SWIFT. But Iran needs to do its part and to address the need to modernize the banking sector and to comply with the requirement to fight terrorism financing and money laundering.⁴¹

The EU thus not only has a security and diplomatic but also a great economic interest in the continued success of the JCPOA. The latter is a prerequisite for wider and more effective engagement with Iran, not the other way around. However, in what is perhaps a Freudian slip, Mogherini herself introduced “the gradual reengagement in all sectors” into the remit of the nuclear deal. Arguably, she faced a Catch 22 situation in which she was forced, on the one hand, to be seen by the participants of the Joint Commission to play a neutral role as coordinator of the JCPOA, while on the other hand having to protect and promote, in her capacity as High Representative, the EU’s general interest in widening economic relations with Iran. It is worth quoting from a recent press conference Mogherini gave with the Russian Foreign Minister Lavrov:

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‘Q. You mentioned the complete implementation of the Iranian nuclear accord. A White House spokeswoman said yesterday that Trump pressed fellow G20 leaders last weekend to stop doing any business with states supporting terrorism, especially – and I am quoting: Iran. Is that a violation of the Iranian nuclear deal? And what do – what is the response of the EU and Russia to those comments?

A. On Iran, I simply reply with the numbers of trade and investments that from the European Union have increased to Iran in terms of double digits and this will continue. We see a security interest to not only fully implement the nuclear deal but also engage with Iran. And we see also, obviously, an economic interest on the European Union side.

We will make sure – I think together, but particularly personally as someone that has this responsibility to ensure – that the deal is fully implemented, and also as the European Union that is united on this. *We will ensure that engagement with Iran will continue and that the deal will be implemented in all its parts by all. This means the nuclear part, this means also all the rest like the lifting of sanctions, as you know, and the gradual reengagement in all sectors.* This is something that the European Union is doing, Member States are doing and we are committed to continue to do it.’⁴²

⁴¹ Helga Schmid, Executive Secretary General of the European External Action Service and leading talks with Iran in the Joint Commission at political director level, speaking on the record about “Europe and Iran: Beyond the Nuclear Deal” at Carnegie Europe on 17th May 2017 (<http://carnegieeurope.eu/2017/05/17/europe-and-iran-beyond-nuclear-deal-event-5595>).

⁴² Remarks by High Representative/Vice-President Federica Mogherini following a meeting with Foreign Minister of the Russian Federation, Sergey Lavrov, Brussels, 11 July 2017, Press release 170711_17, available at https://eeas.europa.eu/headquarters/headquarters-homepage/29710/remarks-high-representativevice-president-federica-mogherini-following-meeting-foreign_en. Italics added.

In an effort, therefore, to sidestep the connection made by President Trump between doing business with Iran and indirectly supporting terrorism, Mogherini sought refuge in the nexus between renewed economic relations with Iran and the implementation of the JCPOA. However, by doing so, the EU High Representative inadvertently imported a foreign element into what is and remains a purely nuclear agreement.

Arguably, any participant in the Joint Commission would be better advised to adopt a strict reading of the JCPOA so as to prevent it from being tainted by arguments that fall outside the deal and could undermine it. This applies in particular to the coordinator, as such issues fall outside its powers as a facilitator and mediator and undermine the EU's authority to act as an honest broker. The challenge posed to the deal by the Trump-led administration puts the EU in the uncomfortable position of having to choose between its role as guardian of the JCPOA, protecting it from interpretative drift, and confronting the US on the issue of good faith in living up to its multilateral commitments. On this issue, Mogherini has taken the right approach by stating that:

Any participant in the Joint Commission would be better advised to adopt a strict reading of the JCPOA to prevent it from being tainted by arguments that fall outside the deal and could undermine it. This applies to the coordinator, as such issues fall outside its powers as a facilitator and mediator and undermine the EU's authority to act as an honest broker.

I know that in the United States there is a review ongoing. We respect it, but we have also the duty to make it clear, the nuclear deal does not belong to one country – it belongs to the international community, to the United Nations system. It was endorsed by the UN Security Council with a resolution and I think we share responsibility to make sure that this continues to be fully implemented by all.⁴³

Russia and China favour the diplomatic role of the EU High Representative as a counterbalance to the presence of the US within the Joint Commission. Considering the animosities towards Iran revived by the Trump-led US administration, the Chinese are prudent to invest in Iran even if Beijing has a major interest in Iranian energy supplies. For its part, Moscow is cooperating with Tehran in Syria and the Russia-led Eurasian Economic Union aims to finalise a free-trade deal before 2018, as announced since 29 May 2017.⁴⁴

While the US is not in the position to unilaterally cancel the multilateral nuclear deal, it can make its implementation very difficult. The moment of truth for the EU to develop a more strategic vision for its relations with Iran, and a set of tactics to deal with US of President Trump, has therefore arrived.

While the US is not in the position to unilaterally cancel the multilateral nuclear deal, it can make its implementation very difficult. The moment of truth for the EU to develop a more strategic vision for its relations with Iran, and a set of tactics to deal with US of President Trump, has arrived.

⁴³ Idem.

⁴⁴ See <https://www.ft.com/content/e2d7da8c-3ee8-11e7-9d56-25f963e998b2?mhq5j=e1>.

Concluding remarks

Two years since the signing of the JCPOA and in the wake of the re-election of President Rouhani in May 2017, it is fair to say that the EU has demonstrated its capacity of leading a complex international monitoring and mediation mechanism while improving its bilateral political and economic relations with Iran. The EU's prestigious diplomatic role was carved out for and by High Representative Javier Solana in November 2004, consolidated during a decade of negotiations, and broadened and formalised with the signature of the JCPOA and the subsequent endorsement by the UN Security Council. The EU High Representative now formally coordinates the executive body of the nuclear agreement. In the Joint Commission, the EU is accepted as a *primus inter pares* among the five permanent members of the Security Council, Germany and Iran. Its role is not just to convene and facilitate discussions about the implementation of the nuclear deal, but also to mediate disputes among any of the participants. So far, it has done so successfully. But the real stress test is about to come. How the EU will cajole the administration of President Trump to keep the US wedded to the JCPOA will determine not just the effectiveness of the nuclear deal, but also colour the legacy of the EU and its High Representative as a diplomatic actor on the global stage.